IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2370 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UTTAMCHAND J SHAH

Versus

DENA BANK

Appearance:

MR MR ANAND for Petitioner No. 1

MR DIPAK C RAVAL for the Petitioner.

MR PRASHANT G DESAI for Respondent Nos. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/12/2003

ORAL JUDGEMENT

1. In the present petition, which is pending before this Court practically since two decades, the challenge is against the order passed by the Disciplinary Authority of the respondent-Bank against the petitioner, imposing a penalty of withholding of one increment without cumulative effect. The petitioner has also challenged the action of the Management in not giving him benefit of promotion with retrospective effect, i.e. with effect

from 1st June, 1982. The petitioner has also challenged paragraphs 3.8 and 3.9 of the Promotion Policy framed by the Bank, under Regulation 17 of the Dena Bank Officers' (Service) Regulations, 1976, on the ground that the same is unconstitutional and arbitrary. The petitioner has also challenged the finding of the Enquiry Officer, by which the Enquiry Officer found that the petitioner has committed misconduct.

2. The facts leading to the present petition are as under :-

At the relevant time, the petitioner was serving as Branch Manager of Dena Bank at Sihori, District : Banaskantha. The petitioner was subjected to charge sheet dated 10th April, 1981. As per the charge sheet, following charges were levelled against the petitioner :-

(i) Lack of honesty, integrity, diligence in discharge of duties, exposing or likely to expose the Bank to the risk of heavy financial loss, and / or

(ii) committing act/s prejudicial to the interest of the Bank exposing or likely to expose the Bank to the risk of heavy financial loss.

The allegation against the petitioner is that while he was working as Branch Manager, at Sihori Branch during the year 1978, he sanctioned term loans for purchasing second hand truck/s as well as for the purchase of diesel jeeps. The petitioner has sanctioned such loans unauthorisedly, violating the discretionary powers vested in him as Branch Manager 'C' Grade Branch.

Particulars of the aforesaid loans sanctioned by the petitioner are annexed along with the petition at Annexure 'A' to the petition, at page 32. The respondent-bank, thereafter, appointed the Enquiry Officer and regular departmental enquiry was conducted against the petitioner. After considering the say of the petitioner and after considering the evidence on record, the Enquiry Officer came to the conclusion that the petitioner has exceeded the authority vested in him and moreover, his explanation, as offered in the arguments, to have been confused with the writing of the Discretionary Powers Booklet, as discussed in the report, would mean his deficiency in understanding, which is not expected of a Branch Manager. As per the finding of the Enquiry Officer, which is at page 45 in the compilation, the Enquiry Officer found that the charges levelled

against the petitioner do not establish lack of honesty or integrity on the part of the petitioner, but it can be summarised that the petitioner was not diligent in discharge of his duties and had the loan amounts been not repaid, the bank would have been exposed to financial loss, but, since the advances are recovered in full, the Bank is not put to any financial loss, and, as per the opinion of the Enquiry Officer, the charges levelled against the petitioner be viewed liberally.

3. As stated earlier, the enquiry was initiated against the petitioner in connection with his duty as a Branch Manager and he had sanctioned certain loans unauthorisedly. After considering various documents and after considering the evidence of the witnesses, the Enquiry Officer has specifically come to the conclusion that the delinquent could not establish the fact that he was vested with discretionary powers for sanction of loan to the parties mentioned in the chargesheet issued to him, though, of course, the Enquiry Officer came to the conclusion that all the loan amounts, referred to in the chargesheet, have been fully repaid.

4. During the departmental proceedings, the petitioner took the defence that, by oversight, he had sanctioned the said loan and that there was no mens rea on his part. The Disciplinary Authority, subsequently, by its order dated 26th September, 1983, accepted the finding of the Enquiry Officer, in toto, and, by relying upon Regulation 7(3) of the Dena Bank Officer Employees' (Discipline & Appeal) Regulations, 1976, the Disciplinary Authority concurred with the finding of guilt reached by the Enquiry Officer of the charge of lack of diligence in discharge of his duty, exposing or likely to expose the Bank to the risk of heavy financial loss, and ultimately, the Disciplinary Authority passed an order, imposing a penalty of withholding of one annual increment of pay without cumulative effect. The said order of the Disciplinary Authority is produced at Annexure 'D', page 46 in the compilation. Along with the penalty order, copy of the Enquiry Officer's report was also given to the petitioner.

5. The Appellate Authority, after considering the arguments of the petitioner, came to the conclusion that the petitioner herein sanctioned the loan without jurisdiction and referred the matter to the Regional Office thereafter for confirmation. The Appellate authority also found that there was no urgency or special justification for exceeding his authority in disbursing the advances and that too, for second hand trucks or

vehicles, for which he had no discretion at all. The appellate authority also found that the petitioner should have obtained the prior permission of the Regional Office and only on receiving approval, should have disbursed the amount. The observations of the appellate authority are finding place at page 54 in the compilation. Considering the aforesaid aspect, the Appellate Authority also dismissed the appeal. The petitioner has, accordingly, challenged the aforesaid order of penalty by way of the present petition.

At the time when the departmental enquiry was pending against the petitioner, by order dated June 7, 1982, the petitioner was promoted, along with other Officers, from Junior Management Grade Scale I to Middle Management Grade Scale II with effect from 1st June, 1982, but results of 30 Officers, who have been issued chargesheets on various grounds, were withheld pending clearance of the charges levelled against such Officers. Since the disciplinary proceedings were pending against the petitioner, his promotion was withheld by the said order until the completion of the disciplinary action.

After conclusion of the Enquiry, as stated earlier, the petitioner was subjected to penalty, as aforesaid, and in view of the penalty inflicted against the petitioner, he was not given benefit of promotion, even though he was selected for such promotion by the said order dated February 7, 1982. The petitioner has also challenged the said action of the Bank in not giving him benefit of such promotion and withholding the same, on the ground that the said action of withholding his promotion would amount to "Double Jeopardy".

The petitioner has also challenged the promotion policy of the Bank, by which the Bank is entitled to withhold promotion for a certain period until the completion of the disciplinary action. The petitioner has prayed that paragraphs 3.8 and 3.9 of the Promotion Policy of the Bank, laid down under Regulation 17 of the Dena Bank Officers' (Service) Regulations, 1976 be declared as unconstitutional.

6. Mr.Raval, learned Advocate who is appearing for the petitioner, strenuously argued the following points :-

(i) That the order inflicting penalty is not just and proper, as the petitioner has not committed any 'misconduct', as defined under the Regulations of the Bank;

(ii) That it is a case of "No Evidence", that the finding of the Enquiry Officer is perverse, and that the Disciplinary Authority has committed a grave error in inflicting the impugned penalty of withholding of one increment without cumulative effect;

(iii) That the action of the Bank in withholding promotion during the pendency of the enquiry is illegal and arbitrary and it would amount to "Double Jeopardy";

(iv) At the time of passing the punishment order, the Bank should also have passed an appropriate order, promoting him retrospectively in view of his selection by the DPC at the earlier point of time. Alternatively, in view of the fact that he was found fit for promotion at the relevant time when the Departmental Promotion Committee met, he was required to be promoted straight away, moment the punishment period is over and was not required to wait till the formation of the DPC; AND

(v) That Paragraphs 3.8 and 3.9 of the Promotion Policy of the respondent Bank, by which the Bank is entitled to withhold promotion, is illegal, arbitrary and discriminatory and, therefore, the same are required to be quashed.

7. Mr.Desai, who is appearing for the Bank, on the other hand, supported the stand of the Disciplinary Authority. It is argued by Mr.Desai that the petitioner, who was serving, at the relevant time, as a Branch Manager, has acted in a negligent manner and he has sanctioned the loan, for which he had no powers and, thereafter, subsequently, tried to get sanction from the higher authority. He submitted that simply because the loan was repaid is no ground to allow the petitioner to go scot-free when the charges levelled against the petitioner are proved and, ultimately, the bank was exposed to the risk of heavy financial loss in case the amount was not recovered within time. Mr.Desai submitted that this Court cannot sit in appeal over the decision of the Disciplinary Authority and that when misconduct is proved, as per the Rules of the Bank, the order imposing such penalty is not required to be interfered with by this Court in its extraordinary jurisdiction. Mr.Desai also further submitted that in view of the penalty imposed on him, the petitioner was not entitled to get

promotion till the penalty period was over and simply because during the pendency of the enquiry, he had appeared before the DPC and was finding place in the merit list, he is not entitled to promotion straight away, as, his selection or placement in the merit list is always subject to the outcome of the disciplinary proceedings. Mr.Desai submitted that after the penalty period is over, the petitioner can always appear before the DPC and at that time, this aspect of penalty is not required to be taken into consideration.

8. I have heard Advocates of both the sides, in detail, and I have also gone through the averments made in the petition as well as the affidavit-in-reply filed by the Bank.

9. So far as the first point argued by Mr.Raval, learned Advocate for the petitioner, in connection with the challenge to the penalty order, is concerned, it is required to be noted that the petitioner was serving as a Branch Manager at the relevant time and he was holding a responsible post. The petitioner was subjected to enquiry on the ground that he had shown lack of honesty, integrity, and diligence in discharge of duties, exposing or likely to expose the Bank to the risk of heavy financial loss and / or had committed an act prejudicial to the interest of the Bank, exposing or likely to expose the Bank to the risk of heavy financial loss. In this connection, various witnesses were examined. At page 38 in the compilation, the Enquiry Officer has considered the evidence of various witnesses. The Disciplinary Authority has specifically found that the petitioner has failed to establish the fact that he was vested with the discretionary powers for sanction of loan to the parties mentioned in the chargesheet. The Enquiry Officer has considered, in detail, the evidence on record. At page 43 in the compilation, the Enquiry Officer has observed as under :-

" ... ...

The Defence in his arguments taken a plea of the sign coma, after the word New Chassis as mentioned in the Discretionary Powers Booklet :-

"New Chassis, (coma) trucks, vehicles, tempos, etc." and he stated with this, he misunderstood the powers vested with him. In his arguments, he has already admitted that he has exceeded the authority as a result of confusion, and that it was not intentional, but accidental, and,

therefore, at the best a misdemeanour.

Defence Representative also tried to prove that the action of the charge-sheeted officer was not intentional as he has referred the matter of granting loan to the referred various borrowers to the Regional Office vide Branch Manager's letter No.UJS/114/78 dated September 18, 1978, No.UJS/132/1978 dated October 25, 1978; UJS/103/1979 dated January 1, 1979 and UJS/110/79 dated January 23, 1979 (marked as Exhibits D-1 to D-4), and the Regional Office had received these letters. It is, therefore, clear that the Branch Manager had not concealed any fact from the Regional Office.

FINDINGS

On going through the evidence and documents and relying on the arguments of Defence, it is evident that he has exceeded the authority vested in him, and moreover his explanation as offered in the arguments to have been confused with the writing of the Discretionary Powers Booklet, as discussed above would at least mean his deficiency in understanding which is not expected from a Branch Manager like him. But, considering the fact as regards the creditability of the borrowers and their financial status, the position, and in view of satisfaction of all the accounts, it is certain that from business point of view on the bank, he has not made any mistake and in view of that, the allegation that by exceeding powers in above manner, he was likely to entail the bank to financial losses does not stand, as the amount advanced to the referred borrowers was fully recovered.

Though the Branch Manager had referred to the Regional Office about the four referred loan account as per Exhibit D-1 to D-4, it is not known why the matter was kept in abeyance by the Regional Office, nor the advances were recalled and why the Branch Manager preferred to keep silence in seeking confirmation of these acts. Furthermore, the Branch Manager is reported to have declared of such accounts in BR-RO-M-2 statements of the branch every month.

In view of the foregoing, the charges levelled against the Branch Manager do not establish the

> lack of dishonesty (sic) and integrity on the part of the Branch Manager. But it could be summarised that the Branch Manager was not diligent in discharge of his duties, had the loan accounts not repaid, the bank would have been exposed to financial loss. But since the advances are recovered in full, the bank is not put to any financial loss, and hence, the charges levelled against Shri U.J. Shah may be viewed liberally.
>
> ... ..."

The finding of the Enquiry Officer is, therefore, based on the evidence on record and, as such, it is not in dispute that the petitioner had acted beyond his powers in the matter of disbursement of the loans. Whether the bank has suffered a financial loss or not, is a different matter altogether, but, it is certain that the petitioner had not acted vigilantly in connection with the sanction and disbursement of the loans. The petitioner, who was serving as a Branch Manager, was supposed to know the procedure and his own jurisdictional limits, upto which he can sanction loans.

The Disciplinary Authority has agreed with the said finding and has taken a very liberal view in the matter, by imposing a penalty of withholding of one annual increment of pay without cumulative effect. The Appellate Authority has also considered the said aspect, which I have referred earlier in this judgment. Considering the aforesaid aspect of the matter, and considering the finding of the Enquiry Officer, as well as considering the order of the appellate authority, in my view, it cannot be said that the petitioner has not committed any misconduct or that it is not a case of misconduct as per the Regulations of the Bank. The case of the petitioner squarely falls within the ambit of committing an act, prejudicial to the interest of the bank, exposing or likely to expose the Bank to the risk of heavy financial loss. The contention of Mr.Raval that this is not a case of 'misconduct', as defined under the Regulations of the Bank, cannot be believed.

10. Similarly, the argument of Mr.Raval that this is a case of "No Evidence", cannot be believed. As such, it is not in dispute that the petitioner had sanctioned the loan beyond his powers. Simply because thereafter, he had sought some clarification can never be said to be a ground available to the petitioner, by which he can come out from the charge of so-called negligence, while acting

as a responsible Officer of the Bank. In a departmental enquiry, even if there is some evidence on record, the order of the disciplinary authority cannot be set aside by the Court. In a given case, even if two views are possible, that is also no ground for setting at naught the decision of the Disciplinary Authority. However, in the instant case, the charge levelled against the petitioner is appropriately proved by the evidence on record.

11. At this stage, reference is required to be made to the decisions cited by Mr.Raval.

Mr.Raval relied upon the decision of the Apex Court in Union of India and others v. J. Ahmed, AIR 1979 SC 1022. In the aforesaid case, the Apex Court has found, in paragraph 9, that the five charges levelled against the delinquent, at a glance, would convey the impression that the respondent therein was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of the Deputy Commissioner are listed as charges. Charge No.2 was in relation to the quality of lack of leadership and charge No.5 enumerates inaptitude, lack of foresight, lack of firmness, and indecisiveness. Considering the nature of the charges levelled against the delinquent in that case, the Supreme Court found that the same could not constitute misconduct for the purpose of disciplinary proceedings. In paragraph 17 of the said judgment, it has been found by the Supreme Court as under :-

" ... ...

17. It thus appears crystal clear that there was no case stricto sensu for a disciplinary proceeding against the respondent. In fact the inquiry was held to establish that the respondent was not fit to hold a responsible post. The respondent was actually retiring from service and there was no question of his any more holding a responsible position. Yet not only the inquiry was initiated but he was retained in service beyond the date of his normal retirement till the final order was made on 11th October, 1963 when he was removed from the Indian Administrative Service. It appears that there were large scale disturbances in the State. There followed the usual search for a scapegoat and the respondent came handy. Some charges were framed none of

> which could constitute misconduct in law. Some charges were mere surmises. Substance of the allegations was that he was not a very efficient officer and lacked the quality of leadership and was deficient in the faculty of decision making. These deficiencies in capacity would not constitute misconduct. If the respondent were a young man and was to continue in the post for a long period, such an inquiry may be made whether he should be retained in the responsible post. He may or may not be retained but to retain him in service beyond the period of his normal retirement with a view to punishing him was wholly unjustified. The High Court was, therefore, right in coming to the conclusion that the respondent was no longer in service on the date on which an order removing him from service was made and, therefore, the order was illegal and void.
>
> ... ..."

So far as the facts of the present case are concerned, the petitioner was holding an important position in a Bank, wherein he was required to disburse loan to various borrowers and looking to the fact that he was holding a sensitive post, it was expected of him to be vigilant and was required to act as per his powers and jurisdiction. Considering the nature of allegation, for which the delinquent was charged, it cannot be said that he has not committed any misconduct worth the name.

Mr.Raval has also relied upon the decision in Bhagwati Prasad Dubey v. The Food Corporation of India, AIR 1988 SC 434. The said case was in connection with disciplinary proceedings and it was found that the finding of the Enquiry Officer about proof of charge of misconduct was based on "no evidence" at all. It has been found by the Supreme Court in paragraph 3 that the Enquiry Officer reached the conclusion on no evidence and without proper appreciation of the background and the circumstances in which the delinquent was required to function at the relevant time. It has been found by the Supreme Court in paragraph 7 that the appellant of that case was constrained to purchase a huge quantity of Mats under the pressure of necessity and that he had acted to the best of his judgment. He, ultimately, sanctioned the payment only at the rates at which another Public Undertaking had acquired the same goods. In the present case, the appellate authority found that there was no urgency worth the name for acting in such a hurried

manner. In the instant case, as pointed out earlier, after considering the oral and documentary evidence, the Enquiry Officer has found that the petitioner has committed misconduct for which he was charged and it can be said that the petitioner was not diligent while discharging duties as a Branch Manager.

Mr.Raval has also relied upon the decision of the Apex Court in A.L. Kalra v. Project and Equipment Corporation of India Ltd., (1984) 3 SCC 316. The appellant of that case applied for house building advance and he was charged for misusing the said advance and he had not refunded the unutilised advance amount, in time. It has been observed by the Apex Court in the said judgment in paragraph 23 as under :-

" ... ...

23. Mr. Ramamurthi, learned counsel for the appellant further contended that the very initiation of the disciplinary enquiry and imposition of punishment of removal from service is thoroughly arbitrary and discloses a vindictive attitude on the part of the respondent Corporation. It was urged that the two heads of charges per se do not constitute any misconduct and they can be styled as trumped-up which even if held approved would not render the appellant liable for any punishment. The two heads of charges have been extracted hereinbefore. Charge No. 1 refers to the drawal of a House Building Advance and failure to comply with the requisite rules prescribed for House Building Advance. According to the finding recorded by the inquiry officer, the failure of the appellant to refund the amount of advance to the respondent-Corporation within two months of the date of the drawal would be violative of Rule 10 (I) (c) (i) of the House Building Advance Rules and it would constitute misconduct within the meaning of the expression in Rule 4(1) (iii) of 1975 Rules. Rule 10 (I) provides that the advance shall be drawn in instalments as prescribed in various sub-clauses. The relevant sub-clause in this case is sub-cl. (C) which provides that "when advance is required partly for purchase of land and partly for constructing a single storeyed new house thereon; (i) not more than 20% of the sanctioned advance on execution by the applicant employees (sic) an agreement in the required form for repayment of the advance.

The amount will be payable to the applicant only for purchasing a developed plot of land on which construction can commence immediately and sale deed in respect thereof be produced for the inspection of CPM/RM within two months of the date on which 20% of the advance is drawn or within such further time as the CPM/RM may allow in this behalf failing which the employee shall be liable to refund at once the entire amount to the Corporation together with interest thereon." A bare reading of the relevant rule will show that it provides for obtaining advance which in this case was taken for purchasing a plot. The inquiry officer accepts the evidence of Mr. Chugh that the appellant had negotiated with him for purchase of a plot but some dispute arose about some additional expenditure and the negotiations protracted over a period of six months. Now para 1 sub-cl.(C) confers on CPM/RM power to extend the time for finalising the deal or call upon the employee to refund the entire amount and he is liable to pay interest thereon. This is the only consequence of taking advance and failure to keep to the time-schedule. The relevant rule is a self contained provision providing for the condition for grant of advance, time table for repayment and consequence of failure to keep to the time schedule. The House Building Advance was drawn on April 4, 1979. On November 13, 1979 the appellant was asked to refund the entire amount. Immediately on November 16, 1979, an order was made withholding the entire salary of the appellant. Even the inquiry officer was constrained to observe that the appellant was exposed to double jeopardy inasmuch as his salary as a whole was withheld and he was being removed from service. It is also pertinent to note that the inquiry officer is not clear when he said 'that once the power to extend the time to repay the advance is conferred and penal interest is charged, is any rule violated.' This is not an attempt to re-appreciate evidence in the case but the entire thing is being analysed to point out that the action apart from being arbitrary is motivated and unjust. If the rules for granting the advance themselves provided the consequence of the breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that

the breach of House Building Advance Rules would by itself constitute a misconduct. That is not the case here as will be presently pointed out. Seeking advance and granting the same under relevant rules, is at best a loan transaction. The transaction may itself provide for repayment and the consequence of failure to repay or to abide by the rules. That has been done in this case. Any attempt to go in search of a possible other consequence of breach of contract itself appears to be arbitrary and even motivated. However, the more serious infirmity in framing this head of charge is that according to the inquiry officer this failure to refund the advance within the time frame in which it was sanctioned constitutes violation of Rule 4 (1) (iii). Let us turn to the charge-sheet drawn-up against the appellant. Under the first head of charge it was stated that the appellant was guilty of misconduct as prescribed in Rule 4 (1) (i) and (iii). Rule 4 (1) (i) provides that every employee shall at all times maintain absolute integrity. How did the question of integrity arise passes comprehension. The appellant applied for House Building Advance. Inquiry officer says that the appellant had negotiated with Mr. Chugh for purchase of a plot. There is not even negative evidence or evidence which may permit an inference that the house building advance was utilised for a purpose other than for which it was granted. Therefore Rule 4 (1) (i) is not only attracted but no attempt was made before us to sustain it. And as far as Rule 4 (1) (iii) is concerned, we fail to see how an advance not refunded in time where it was recovered by withholding the salary of a highly placed officer discloses a conduct unbecoming of a public servant. Therefore, the first head of charge is an eye-wash. It does not constitute a misconduct if it can be said to be one even if it remains unrebutted. The inquiry officer has not said one word how the uncontroverted facts constitute a conduct unbecoming of a public servant, or he failed to maintain absolute integrity.

... ..."

The second charge against the appellant in the said case before the Supreme Court was regarding conveyance advance, which was not utilised by the

appellant for the purpose for which it was granted. The Supreme Court come to the conclusion that, on scrutiny of the report, it was found that the Enquiry Officer had not recorded any finding in respect of the said charge adverse to the appellant. Considering the facts of the case, it was found that the alleged misconduct does not constitute misconduct and for that purpose, the Court had also considered the evidence on record.

Mr.Raval has also further relied on the Division Bench judgment of the Calcutta High Court in Dipankar Sengupta and another v. United Bank of India & Others, 1999 I LLJ 222. A Division Bench of the Calcutta High Court, considering the facts of that case, came to the conclusion that as per the Enquiry Officer's findings, the alleged procedural lapses and lack of supervision on the part of the petitioners therein could not come within the purview of the word 'misconduct', in terms of the Bank's Conduct Regulations. In the aforesaid case, the delinquents were serving as a Deputy Manager (Advance) and Assistant Manager (Advance), respectively, of the Calcutta Branch of the respondent-Bank and as per the charges levelled against them, they had processed the proposal for sanction of Bill Discount Limits of Rs.25/- lacs each, to 18 companies. While processing the said proposal, they had failed to adhere to the usual banking norms, and, accordingly, they had failed to discharge their duties with utmost integrity, devotion and diligence and, thereby committed misconduct as per the Regulations. Over and above the said charge, they were also subjected to some other charges also. The Division Bench of the Calcutta High Court came to the conclusion that some sort of ill-motive or bad motive is an essential ingredient in imputing misconduct against an individual and it was found that such was not the case there. Considering the nature of misconduct alleged against the delinquents, ultimately, it was found that it cannot be said that any misconduct is committed by the delinquent.

So far as the facts of the present case are concerned, I have already dealt with the same and I have also dealt with the finding of the Enquiry Officer. Considering the nature of misconduct alleged against the petitioner and considering the report of the Enquiry Officer, which is, ultimately, accepted by the Disciplinary Authority, and considering the reasoning of the appellate authority, in my view, it cannot be said that the petitioner has not committed any act of misconduct as per the disciplinary Rules of the Bank, nor can it be said that it is a case of "No Evidence" or that the finding of the Enquiry Officer is perverse in any

manner. As pointed out earlier, the petitioner had sanctioned the loan, which was beyond his power. It is a different thing that the Bank was able to recover the entire amount of loan, but, because of the aforesaid rash act of the petitioner, the respondent-Bank was certainly exposed to the risk of heavy financial loss. From the facts of the case, it is clear that there was likelihood or apprehension of financial loss to the bank. As a responsible Bank Officer, it was the duty of the petitioner to act with caution and care, especially when he was dealing with the public money. I, therefore, do not find any infirmity in the decision of the Disciplinary Authority in any manner.

I agree with the submission of Mr.Desai that the Bank itself has taken a charitable view by imposing a penalty of withholding of one increment without cumulative effect. Since no financial loss was caused to the bank, the petitioner was not visited with a major penalty, but the lapse alleged against the petitioner cannot be taken so lightly so that he can be allowed to go absolutely scot-free, even without a minor penalty. Considering the aforesaid aspect, in my view, it cannot be said that the petitioner has not committed any misconduct nor can it be said that it is a case of "No Evidence" or that the finding of the Enquiry Officer is perverse.

So far as the challenge to the penalty order is concerned, these are the points canvassed by Mr.Raval, learned Advocate for the Petitioner. Since I do not find any merit in any of the said contentions, the same are hereby rejected.

12. As regards the contention of Mr.Raval that the punishment of withholding of promotion as well as inflicting of punishment of withholding of one increment would be a "double jeopardy" is concerned, I do not find any substance in the same. There is no order of penalty imposed against the petitioner, by which his promotion is withheld. As a matter of fact, it is a consequence of imposing a penalty of withholding of one increment, which disentitled the petitioner for promotion as per the Regulations.

At this stage, reference is required to be made to the decision of the Supreme Court in State of T.N. v. Thiru K.S. Murugesan and others, (1995) 3 SCC 273. The relevant observations of the Supreme Court are in paragraphs 3, 4, 5, 6 and 7, which read as under :-

" ... ...

3. The only question is whether non-consideration of the respondent's promotion for the year 1983-84 is in accordance with law. The Tribunal found that having imposed the penalty of punishment of stoppage of three increments, promotion cannot be withheld on that account which otherwise amounts to "double jeopardy" offending Article 21 of the Constitution and that, therefore, it is arbitrary exercise of power violating Article 14 read with Article 16 of the Constitution. We find the reasoning of the Tribunal to be not correct.

4. It is contended by Mr.Pandey, learned counsel for the respondent, that under Rule 8 of the Rules, the relevant date to be considered for inclusion in the list of the approved candidates for promotion is 1st September of the year of consideration. In 1984 when the respondents' claim was to be approved by the Government, there was no punishment in the eye of law and that, therefore, non-consideration of his case is vitiated by error of law.

5. We find no substance in the contentions. It is already seen that on 6.12.1982, the punishment of stoppage of two increments was imposed and it was in vogue on 6.11.1984, when the list was approved by the Government. The punishment was reiterated after fresh inquiry. Rule 3 of the Rules provides that "promotion to the posts of Director of Statistics, Deputy Director of Statistics shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal". In other words, the claim of Assistant Statistical Officer for promotion to Deputy Director shall be considered on grounds of merit and ability alone. Unless the seniority is approximately equal, seniority has no role to play and needs to be relegated to the background.

6. A Bench of three Judges of this Court in Union of India v. K.V. Jankiraman, (AIR at p.2018, para 8) considered thus : (SCC p.123, para 29)

"According to us, the Tribunal has erred

in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presentii. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into

consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.

7. It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impedient. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution.

... ..."

Considering the facts of this case, it cannot be said that it is a case of "double jeopardy" in any manner and in view of the aforesaid judgment, the petitioner is not entitled to be considered for promotion for the period during which the penalty order is in force.

Considering the aforesaid aspect of the matter, the contention of Mr.Raval on the said point is also required to be negatived.

13. It was next argued by Mr.Raval that, during the pendency of the Enquiry Proceedings, the petitioner was permitted to appear before the D.P.C. and, ultimately, he was placed in the merit list for promotion. Mr.Raval submitted that, ultimately, when the petitioner was subjected to penalty of withholding of one increment, which is a minor penalty, he should have been retrospectively promoted.

At this juncture, reference is required to be made to the promotion policy framed by the Bank. The Promotion Policy framed by the Bank is as under :-

" ... ...

3.8 Officers in respect of whom disciplinary action has been taken in the past would not normally be permitted to participate in the promotion process for a period of 3 years from the time of infliction of the punishment. In cases, however, where minor penalties have been inflicted excepting that of censure or caution, the Officer will not be entitled to participate in the promotion process during the period he undergoes the punishment.

3.9 Officers in respect of whom disciplinary action is in process, will, however, be permitted to take part in the promotion process, subject to the condition that the promotions will be withheld until the completion of the disciplinary action. In the event of the officer being exonerated, the promotion, if due, will be given effect to from the date on which it would have been otherwise effected but for the disciplinary action.

... ..."

As per the aforesaid Paragraph 3.8, the petitioner, naturally, is not entitled to promotion during the period he undergoes the punishment. This is not a case, wherein the petitioner is totally exonerated in the disciplinary action or subjected to a penalty of censure or caution. In such eventuality, the petitioner was required to be promoted from the date on which he was found fit for promotion by giving retrospective effect.

When the Disciplinary Proceedings were pending against the delinquent, such Officer is allowed to take part in the promotion process, with a view to seeing that in case he is exonerated or subjected to some caution or censure, naturally, he can be given the benefit of such promotion and, therefore, for that reason, if he is allowed to participate in the promotion process, he cannot be given such benefit even if, ultimately, he is found guilty and is subjected to any penalty. As per paragraph 3.9, if the petitioner was, ultimately, exonerated, naturally, he could have been given promotion from the date on which the promotion would have been otherwise effected but for the disciplinary action. Simply because his promotion was withheld in view of the departmental proceedings, it cannot be said that the petitioner was subjected to any prejudicial treatment. In view of the penalty imposed on him, naturally, he was not entitled to such promotion during the period he undergoes the penalty. Considering the said aspect, since the petitioner is not exonerated in the enquiry, nor is he subjected to any penalty, like censure or caution, he cannot get benefit of promotion with retrospective effect, i.e. from the date on which he was found fit by the DPC. As the said process was undertaken at the time when the disciplinary proceedings were already pending, in view of the aforesaid provisions and in view of the penalty of withholding of one increment for one year, the case of the petitioner is required to be reconsidered as and when DPC meets, wherein the petitioner can again take part in promotion process, after undergoing the said penalty of withholding of increment for a period of one year and not before that. In view of the aforesaid promotion policy of the Bank, I do not find any substance in the argument of Mr.Raval that the petitioner was required to be promoted with retrospective effect, on the expiry of the punishment imposed on him.

So far as the contention of Mr.Raval about challenge to the aforesaid promotion policy is concerned, Mr.Raval is not in a position to substantiate the said argument in any manner. As per the promotion policy, the petitioner is not required to be considered for promotion when the order of penalty is in force. When an employee is undergoing penalty order, naturally, if he is to be promoted, it would give premium to his so-called alleged act of misconduct. To promote him in spite of the penalty order, which is in force, would be contradictory in terms. Ultimately, after the punishment period is over, even as per the Promotion Policy, his case can be considered for future promotion as per the availability of posts. Mr.Raval is, therefore, not in a position to

substantiate his say as to how the promotion policy is irrational or discriminatory.

Mr.Raval also placed reliance upon the decision of the Apex Court in Union of India v. K.V. Janakiraman, AIR 1991 SC 2010. It has been held by the Apex Court that if an employee is exonerated in criminal prosecution / departmental proceedings, benefit of promotion cannot be denied to him. The Supreme Court has also found that the sealed cover procedure is required to be adopted only when the chargesheet is issued. It has been held that the promotion cannot be withheld merely because some disciplinary proceedings / criminal prosecution are pending against the employee. To deny the said benefit, at the relevant time, criminal prosecution / departmental proceedings must be pending at the stage when the charge memo / chargesheet has already been issued against the employee. It was held that pendency of preliminary investigation prior to that stage is not sufficient to enable the authorities to adopt the procedure. In the instant case, at the time when the petitioner was allowed to appear before the Departmental Promotion Committee, departmental enquiry was already pending against him and, therefore, naturally, his promotion was withheld. If he was exonerated after the termination of the enquiry proceedings, naturally, he was required to be promoted on the date on which he was found fit by the DPC, but the facts in the instant case are different, as, the petitioner was already subjected to penalty after the conclusion of the enquiry.

14. At this juncture, the stand taken by the Bank in the affidavit-in-reply is also required to be taken into consideration. In paragraph 9 of the reply, it is stated as under :-

" ... ...

9. With reference to the contents of para 8 of the petition, I crave leave to refer to Regulation 17 of the Regulations framed by the Board of Directors in consultation with the Central Government. Regulation 17 provides as under :-

"17(1) Promotions to all grade of officers in the Bank shall be made in accordance with the policy laid down by the Board from time to time having regard to the guidelines of the

Government, if any.

(2) For the avoidance of doubts, it is clarified that this Regulation shall also apply to promotion of any category of employees to the junior management grade."

The Government have issued guidelines in terms of Regulation 17. Promotion Policy for Officers has made certain provisions in respect of promotion from Junior Management Grade scale I to Middle Management Grade/Scale II. Weightage of 30% has been accorded to seniority for promotion, 10% for educational / professional qualifications, written examination 40%, performance appraisal 10% and potential 10%. The selection area for promotion in all grades will be All-India. For the promotion from scale I to scale II, the written test is conducted under the National Institute of Bank Management or any other appropriate Agency as may be decided by the Management General Rules in respect of promotion policy are mentioned in clause 3.8, 3.9 and 3.10. I say that the provision is made in the Promotion Policy so that no injustice is done to the Officers in respect of whom disciplinary action is in process. It is provided that they will, however, be permitted to take part in the promotion process, subject to the condition that the promotions will be withheld until the completion of the disciplinary action. In the event of the Officers being exonerated, the promotion, if due, will be given effect to from the date on which it would have been otherwise effected but for the disciplinary action. I say that subject to the result of the inquiry, the petitioner was permitted to participate in the promotion process. Preparation of final merit list is as per clause 11.1 to 11.8. I say that the question of promoting the petitioner from the Junior Management grade scale I to Middle Management Grade scale II with effect from 1st June, 1982 did not arise till

the completion of the inquiry proceedings. I say that Annexure-'E' to the petition makes it clear that the question of selecting the petitioner for promotion and / or declaring the petitioner as having been selected did not arise since disciplinary proceedings against the petitioner were not over at the relevant time in view of clause 3.9 of the Promotion Policy. I say that assumption made by the petitioner that the petitioner was found fit for promotion is not relevant. In fact, weightage for various factors will have to be given in the matter of promotion. Apart from seniority, Educational / Professional qualifications and Written Examination, Performance appraisal and Potential are also important criteria which are given due weightage. I say that view in the clear cut promotion policy laid down by the bank, the petitioner will have to participate in the promotion process after he undergoes his minor punishment. I say that the promotion policy is laid down by the Board of Directors unanimously and on the Board of Directors, there are Directors representing Officers as well as Award staff.

... ..."

15. Mr.Desai relied upon the decision of the apex Court in State of M.P. and another v. I.A. Qureshi, (1998) 9 SCC 261. It has been observed by the Honourable Supreme Court in paragraph 8 as under :-

" ... ...

8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2.5.1990. Once it is held

that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings.

... ..."

Considering the aforesaid aspect of the matter, and in view of what is stated in the earlier part of this judgment, in my view, the Bank has not committed any error in not giving promotion to the petitioner with retrospective effect, nor is the petitioner entitled to such benefit as he is required to appear again before the D.P.C. after the completion of the enquiry and he cannot get the benefit of promotion straight away on the basis of the earlier selection when the DPC found him fit for promotion when the enquiry proceedings were pending.

16. After considering the submissions of the rival parties, since I do not find any substance in any of the aforesaid arguments raised by Mr.Raval, learned Advocate of the petitioner, the petition is required to be dismissed and it is accordingly dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. No costs.

9th December, 2003 (P.B. Majmudar, J.)

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(apj)